

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza
New York, NY 10006-1470

T: +1 212 225 2000

F: +1 212 225 3999

clearygottlieb.com

AMERICAS	ASIA	EUROPE & MIDDLE EAST	
NEW YORK	BEIJING	ABU DHABI	LONDON
SAN FRANCISCO	HONG KONG	BRUSSELS	MILAN
SÃO PAULO	SEOUL	COLOGNE	PARIS
SILICON VALLEY		FRANKFURT	ROME
WASHINGTON, D.C.			

D: +1 212 225 2333
memcdonald@cgsh.com

CRAIG B. BROD
RICHARD J. COOPER
JEFFREY S. LEWIS
PAUL J. SHIM
STEVEN L. WILNER
DAVID C. LOPEZ
MICHAEL A. GERSTENZANG
LEV L. DASSIN
DAVID H. BOTTER
JORGE U. JUANTORENA
DAVID LEINWAND
JEFFREY A. ROSENTHAL
MICHAEL D. DAYAN
CARMINE D. BOCCUZZI, JR.
JEFFREY D. KAPFF
FRANCISCO L. CESTERO
FRANCESCA L. ODELL
WILLIAM L. MCRAE
JASON FACTOR
JOHN H. KIM
ALAN M. LEVINE
MARGARET S. PEONIS
LISA M. SCHWEITZER
JUAN G. GIRALDEZ
DUANE MCLAUGHLIN
CHANTAL E. KORDULA
BENET J. O'REILLY
ADAM E. FLEISHER
SEAN A. O'NEAL
GLENN P. MCGRORY
DEBORAH NORTH
MATTHEW P. SALERNO
MICHAEL J. ALBANO
VICTOR L. HOU

ROGER A. COOPER
LILLIAN TSU
AMY R. SHAPIRO
JENNIFER KENNEDY PARK
ELIZABETH LENAS
LUKE A. BAREFOOT
JONATHAN S. KOLODNER
DANIEL ILAN
MEYER H. FEDIDA
ADRIAN R. LEPSIC
ELIZABETH VICENS
ADAM J. BRENNEMAN
ARI D. MACKINNON
JAMES E. LANGSTON
JARED GERBER
RISHI ZUTSHI
JANE VANLARE
AUDRY X. CASBOL
ELIZABETH DYER
DAVID H. HERRINGTON
KIMBERLY R. SPOERRI
AARON J. MEYERS
DANIEL C. REYNOLDS
ABENA A. MAINOO
HUGH C. CONROY, JR.
JOHN A. KUPIEC
JOSEPH LANZKRON
MAURICE R. GINDI
KATHERINE R. REAVES
RAHUL MUKHI
ELANA S. BRONSON
MANUEL SILVA
KYLE A. HARRIS
LINA BENSMAN

ARON M. ZUCKERMAN
KENNETH S. BLAZEJEWSKI
MARK E. McDONALD
F. JAMAL FULTON
PAUL V. IMPERATORE
CLAYTON SIMMONS
CHARLES W. ALLEN
JULIA L. PETTY
HELENA K. GRANNIS
SUSANNA E. PARKER
THOMAS S. KESSLER
JONATHAN MENDES DE OLIVEIRA
BRANDON M. HAMMER
KYLE N. BARZA
NICKOLAS BOGDANOVICH
MATTHEW G. BRIGHAM
RESIDENT PARTNERS

JUDITH KASSEL
BOAZ S. MORAG
HEIDE H. ILGENFRITZ
ANDREW WEAVER
CATHERINE S. GRIMM
JOHN V. HARRISON
LAURA BAGARELLA
JONATHAN D.W. GIFFORD
DAVID W.S. YUDIN
KARA A. HAILEY
ANNA KOGAN
BRIAN J. MORRIS
CARINA S. WALLANCE
ALEXANDER JANGHORBANI
JOSHUA PANAS
CHARITY E. LEE
RESIDENT COUNSEL

February 2, 2024

VIA ECF

Hon. Robyn F. Tarnofsky,
Daniel Patrick Moynihan United States Courthouse,
United States Courthouse,
500 Pearl St.,
New York, NY 10007-1312.

Plaintiff's application is GRANTED. The confidential documents (ECF Nos. 48 and 50) shall remain under seal.

The Court of the Clerk is respectfully directed to terminate ECF 47.

Dated: February 5, 2024
New York, NY

SO ORDERED


ROBYN F. TARNOFSKY
UNITED STATES MAGISTRATE JUDGE

Re: *Thales Avionics, Inc. v. L3 Technologies, Inc.*, No. 24-cv-112 (JGK) (RFT)

Dear Magistrate Judge Tarnofsky:

I write on behalf of Plaintiff Thales Avionics, Inc. ("Plaintiff") pursuant to Rule III.E of Your Honor's Individual Practices to respectfully request leave to: (1) file under seal Exhibit 1, Exhibit 2, and Exhibit 3 attached to the Declaration of Mark E. McDonald, dated February 2, 2024; and (2) file in redacted form Plaintiff's reply in support of its motion for preliminary injunction in aid of arbitration ("Reply") (collectively, "Confidential Documents").

Exhibit 1 and Exhibit 2 are documents that Your Honor ordered to be "treated as highly confidential with disclosure limited to outside counsel's eyes only" once produced by Defendant. ECF No. 41 at 1. Moreover, Defendant has previously moved for its letter referring to and describing some of the contents of Exhibit 1 and Exhibit 2 (ECF No. 38) to be filed under seal because it "contains confidential and competitively sensitive information" and because the communications described therein, including Exhibit 1 and Exhibit 2, were "made in connection with a competitive bidding process that has not yet resulted in a final sale." ECF No. 37.

Exhibit 3 is also a non-public document that relates to Defendant's efforts to sell its entire avionics business and contains financial information about Defendant's avionics business. Furthermore, in its communications with Plaintiff before this action was filed, Defendant maintained that that all such documents are covered by a Confidential Agreement as

Hon. Robyn F. Tarnofsky, p. 2

of May 24, 2023 between Plaintiff's and Defendant's parent companies, which in turn provides that all documents subject to it should be kept "strictly confidential." ECF No. 12-1 at 1-2.

Finally, the portions of its Reply that Plaintiff moves to redact either describe the content of Exhibits 1-3, or contain information that Defendant considers confidential and commercially sensitive (ECF No. 32). Your Honor previously granted Defendant's application to redact portions of Defendant's Opposition that contained similar types of information. ECF No. 36.

"Established factors and values that can outweigh the presumption of public access include . . . business secrecy . . . and privacy interests." *Valassis Commc'ns, Inc. v. News Corp.*, No. 17-CV-7378 (PKC), 2020 WL 2190708, at *1 (S.D.N.Y. May 5, 2020). Courts have granted motions to seal commercially sensitive information, which, if disclosed, could cause competitive harm. *See, e.g., Rubik's Brand Ltd. v. Flambeau, Inc.*, No. 17-CV-6559 (PGG) (KHP), 2021 WL 1085338, at *1 (S.D.N.Y. Mar. 22, 2021) (granting motion to seal license agreements, invoices, and documents relating to marketing strategy); *Tropical Sails Corp. v. Yext, Inc.*, No. 14 CIV. 7582, 2016 WL 1451548, at *4 (S.D.N.Y. Apr. 12, 2016) (sealing exhibits that would cause defendant "competitive injury" if disclosed). *Cf. United States v. Amodeo*, 71 F.3d 1044, 1051 (2d Cir. 1995) ("Commercial competitors seeking an advantage over rivals need not be indulged in the name of monitoring the courts.").

Plaintiff has no objection to filing any of these documents publicly. However, given that Exhibit 1 and Exhibit 2 were produced as highly confidential, Exhibit 3 contains non-public financial information about Defendant's business and is of a type that Defendant previously maintained to be confidential, and portions of Plaintiff's Reply refer to those or other documents that have been filed under seal and information that has been redacted in previous filings in this action, Plaintiff respectfully asks that Your Honor provisionally grant this Motion until Defendant has an opportunity to be heard on whether any or all of the Confidential Documents should be kept under seal.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that Your Honor enter an Order allowing Plaintiff to file the Confidential Documents under seal.

Dated: New York, New York
February 2, 2024

Respectfully submitted,



Mark E. McDonald

cc: All Counsel of Record (via ECF)